

The New Ohio Municipal Court Act

ROBERT L. WILLS*

The new municipal court act is a milestone in the development of the Ohio judicial system. It was necessary to overcome many obstacles and to resolve many conflicting interests in order to make its enactment possible. A high degree of uniformity has been attained. The statute is well drafted. Provisions which may require amendment are relatively minor. They appear to be surprisingly few, in view of the number and complexity of the problems involved. The sponsors of the Act wisely avoided the inclusion of detailed procedural provisions. Such matters can be dealt with more effectively in the light of experience under the statute. The Act marks a long step forward in the improvement of the administration of justice in the municipal courts, where many citizens have their only contact with the machinery of the law.

HISTORY

Beginning in 1910, with the establishment of the Municipal Court of Cleveland, the Ohio Legislature had established, by separate acts, thirty-nine municipal courts. Although the provisions of the various acts were parallel in many respects, the number of divergences was substantial. As a result, the interpretation of a provision of one municipal court act would frequently afford little guidance to the interpretation of provisions of other municipal court acts. The existence of separate municipal court acts created legislative drafting problems in connection with the establishment of a new municipal court. In the preparation of a new separate municipal court act, it was often the practice to include provisions from different existing acts, rather than to follow one existing act completely. The amendment of existing acts had a tendency to increase the number of divergences between acts.¹

Such considerations led to the advocacy of a uniform municipal court act. In 1949, the 98th General Assembly passed a bill, known as Amended Substitute Senate Bill No. 145, which would have constituted a uniform municipal court act.² However, it was vetoed by the Governor on July 28, 1949, largely because in his opinion

*Associate Professor of Law, College of Law, The Ohio State University.

¹ The disadvantages of the system of separate municipal court acts were discussed comprehensively by Judge Robert L. McBride of the Municipal Court of Dayton in two published addresses, *Unification of Ohio Municipal Courts*, 22 OHIO BAR 619 (Jan. 30, 1950), and *Municipal Court Reform is Necessary*, 23 OHIO BAR 679 (Nov. 27, 1950).

² The bill was originally drafted by the Bureau of Code Revision at the instance of the Legislature. Senate Joint Resolution 17, 97th General Assembly, 122 Ohio Laws 767 (1947).

the bill failed to achieve substantially the goal of uniformity. A new bill, House Bill No. 658, 98th General Assembly, was drafted to meet the Governor's objections and introduced near the close of the session. It passed the House with the Governor's endorsement and commendation, but when it reached the Senate, there were not sufficient Senators present to suspend the rules and pass it.

On November 4, 1950, the Council of Delegates of the Ohio State Bar Association approved a bill for submission to the 99th General Assembly. This bill was substantially the same as House Bill No. 658, 98th General Assembly.³

The bill was introduced as Senate Bill No. 14 by Senator Marshall of Franklin County in the 99th General Assembly. It was given intensive consideration in the Judiciary Committees of both houses, and many suggestions were received. As a result, a considerable number of amendments were adopted, making a substitute bill necessary. The substitute bill, as amended, was passed by both houses, approved by the Governor on June 13, 1951, and filed in the office of the Secretary of State on June 14, 1951.⁴

EFFECTIVE DATE

The Act⁵ was declared to be an emergency measure, and to go into immediate effect, in order to afford the opportunity to elect judges for the newly established municipal courts at the general election in 1951.⁶ However, the general provisions of the Act do not go into effect until January 1, 1952. Section 2 of the Act provides that the existing municipal court act sections are repealed as of December 31, 1951. The present jurisdiction and procedure of the existing municipal courts therefore continue unchanged until that date.⁷ Thus, an interim period is established during which the practice of the existing municipal courts may be adjusted to the provisions of the new law.

ESTABLISHMENT OF MUNICIPAL COURTS

Section 1581 of the General Code establishes a municipal court

³ The discussion herein of the history of this legislation is based in part on the article, *Proposed Uniform Municipal Court Act*, 23 OHIO BAR 721 (Dec. 25, 1950), which contains the text of the recommended bill.

⁴ Although the law is sometimes referred to as the "Uniform Municipal Court Act," the word "uniform" was deleted from the title by amendment.

⁵ Amended Senate Bill No. 14 will hereinafter be referred to as "the Act."

⁶ The nomination and election of judges of municipal courts under the Act is discussed in Opinion No. 535 of the Attorney General of Ohio, rendered July 14, 1951. The election and appointment of clerks of municipal courts under the Act is discussed in Opinion No. 705 of the Attorney General of Ohio, rendered September 4, 1951.

⁷ OHIO GEN. CODE § 1617.

in each of fifty-five alphabetically enumerated municipal corporations. Sixteen of these courts are newly created by the Act. In the future, a new municipal court may be created simply by (1) adding the name of the new municipal corporation to the enumeration in this section, (2) providing for the terms and times of election of judges in Section 1588, and (3) providing for additional territorial jurisdiction in Section 1582, if so desired.

TERRITORY

The term "territory" is frequently used in the Act. It is defined in Section 1583 of the General Code as the "geographical areas within which municipal courts have jurisdiction as provided in Sections 1581 and 1582." The territory of the municipal court always includes the area comprised within the corporate limits of the municipal corporation. Section 1582 provides for additional territorial jurisdiction in the case of a number of municipal courts.

JUDGES

Section 1585 of the General Code provides for the number of municipal court judges, which is based on the population of the territory of the particular municipal court.

Section 1587 provides that all municipal court judges, including chief justices, shall be elected for terms of six years.⁸

Section 1590 contains an interesting provision for the appointment of an "acting judge" when a judge of a municipal court having only one judge is temporarily absent or incapacitated.

The compensation of municipal judges under the Act is fixed by Section 1591, and the compensation of newly-elected judges would be governed by the Act. There are certain municipal judges whose terms do not expire this year. Sections 1588 and 1617 clearly provide that the existing terms of municipal judges shall not be affected by the Act. It must be assumed that it was the legislative intent that the salaries of such judges should continue unchanged, as an attempt to change their salaries would violate Article II, Section 20 of the Ohio Constitution, prohibiting any change in the salary of any officer during his existing term.

CHIEF JUSTICES AND PRESIDING JUDGES

"In a municipal court having twelve or more judges, one of such judges shall be designated as a chief justice, who shall be

⁸ Article IV, Section 10 of the Ohio Constitution provides that "all judges, other than those provided for in this constitution, shall be elected . . . but not for a longer term of office than five years." However, Article XVII, Section 2 provides that the term of office of judges other than those mentioned therein "shall be such even number of years not exceeding six (6) years as may be prescribed by the general assembly."

elected as such. . . ."⁹ The Municipal Court of Cleveland will be the only municipal court which will have a chief justice.

"In a municipal court having three to eleven judges, the presiding judge shall be selected by the respective judges of said court on the second Monday in January of the even numbered years."¹⁰ The judge so selected would not have been elected as a presiding judge. However, Section 1591 provides that "the presiding judge of a municipal court shall receive an additional five hundred dollars . . ." As the selection of the presiding judge, and his consequent increase in salary, would take place during his term of office, the question may be raised as to whether such increase would violate Article II, Section 20 of the Ohio Constitution, *supra*.¹¹

"In a municipal court having two judges, the judge whose term next expires shall be designated as the presiding judge."¹² A similar constitutional question may arise as to the additional compensation of such a presiding judge, although the automatic method of selection would perhaps be a basis for distinction.

The relationship of the judges of a multi-judge municipal court is further regulated by Sections 1600 and 1601.

MAXIMUM PECUNIARY LIMITATION ON JURISDICTION

Section 1593 of the General Code provides that a municipal court shall have original jurisdiction in cases where the amount claimed by any party, or the value of personal property sought to be recovered, does not exceed \$2,000.00. (An exception is made in the case of the Municipal Court of Cleveland, in which the maximum is \$5,000.00.) This represents an increase in the maximum jurisdiction of most municipal courts. The effect of this jurisdictional limitation on counterclaims is discussed *infra*. Section 1602 (F) provides that "when the amount due either party exceeds the sum for which a municipal court is authorized to enter judgment, such party may in writing remit the excess and judgment [may?] be entered for the residue."

⁹ OHIO GEN. CODE § 1589.

¹⁰ *Ibid*.

¹¹ In *State ex rel. Mack v. Guckenberger*, 139 Ohio St. 273, 39 N.E. 2d 840 (1942), it was held that a statute, effective before the commencement of the term of a common pleas judge whereby his compensation is automatically increased during his term by reason of the increase in the population of his county, is not in conflict with Article IV, Section 14 of the Ohio Constitution. Even if the principle of this case is applicable to newly elected municipal judges, it could hardly be contended that it is applicable to municipal judges elected prior to June 13, 1951, the effective date of the Act, whose terms continue beyond January 1, 1952.

¹² OHIO GEN. CODE § 1589.

ORIGINAL CIVIL JURISDICTION WITHIN TERRITORY AND
WITHIN COUNTY

Although the municipal court is a court of record, it is not a court of general jurisdiction, and therefore has only such jurisdiction as may be conferred by law. Civil jurisdiction is conferred on the municipal court by Sections 1594 and 1595 of the General Code, subject to the \$2,000.00 maximum established by Section 1593. Section 1594 provides for the jurisdiction of a municipal court within its territory, and Section 1595 provides for the jurisdiction of a municipal court within the *county* or *counties* in which its territory is situated. The county wide jurisdiction is narrower in scope than the jurisdiction within the territory.

(1) Civil Jurisdiction Within Territory

Section 1594 of the General Code, providing for the civil jurisdiction of the municipal court within its territory, conforms rather closely to the provisions of most of the old separate municipal court acts. Important exceptions are made as to the municipal court of Cleveland.

(2) Civil Jurisdiction Within County

Section 1595 of the General Code, providing for the civil jurisdiction of the municipal court within the county, contains several provisions which were found in most of the old separate municipal court acts. However, certain provisions deserve particular mention.

Sub-section (D) of Section 1595 confers county wide jurisdiction on the municipal court "in any civil action or proceeding at law in which the subject matter of the action or proceeding is located within the territory or when the defendant or some one of the defendants resides or is served with summons within the territory." Thus, if there are two defendants, and Defendant 1 is served within the territory, and Defendant 2 is served outside the territory but within the county, the municipal court has jurisdiction, under sub-section (D). If Defendant 2 cannot be served within the county, the case does not come within sub-section (D), but it would seem that the court could acquire jurisdiction of Defendant 2 by issuing summons to the sheriff of his county under Section 1603. As in the case of most procedural legislation, the Act does not purport to distinguish between the following concepts: (1) jurisdiction of the subject matter; (2) jurisdiction of the person of the defendant; and (3) venue. Therefore, the usual venue-jurisdiction confusion may be anticipated.¹³

¹³ See Wills, *The Effect of Improper Venue Upon Jurisdiction of the Person and Jurisdiction of the Subject Matter*, 11 OHIO ST. L. J. 291 (1950), and Stevens, *Venue Statutes: Diagnosis and Proposed Cure*, 49 MICH. L. REV. 307 (1951).

Sub-section (E) of Section 1595 confers county wide jurisdiction on the municipal court "in all civil actions for the recovery of money only where the amount claimed by the plaintiff exceeds the exclusive jurisdiction of justices of the peace."¹⁴ This would seem to permit a suit for \$100.01 or more against a defendant who is served within the county but outside the territory. However, if there are two defendants, and Defendant 1 is served within the county but outside the territory, and Defendant 2 is outside the county, Section 1603 does not permit the issuance of summons to his county, as such issuance is restricted to cases in which, *inter alia*, "... a defendant ... is served with summons within said territory" (Emphasis supplied.) It is questionable whether Section 11282 would justify service on Defendant 2 in this situation.

Sub-section (H) of Section 1595 confers county wide jurisdiction on the municipal court "in any action for injury to person or property caused by the negligent operation of a motor vehicle, as provided by Sections 6308 and 6308-1 of the General Code." Apparently the effect of this sub-section is that if an injury to person or property is caused by the negligent operation of a motor vehicle within the county, an action for such injury may be brought in a municipal court in the county. Summons may be issued to the sheriff of another county, or, if the defendant is a non-resident of the state, service may be made under the non-resident motorist statutes.¹⁵

PRACTICE AND PROCEDURE IN CIVIL ACTIONS

Sections 1597 and 1599 of the General Code, construed together, in effect provide that practice and procedure in civil actions in the municipal court shall be controlled (1) by the Act itself; (2) if no provision in the Act is applicable, by common pleas court statutes; (3) if neither, then by justice of the peace statutes; (4) if none of the foregoing, by local rule of court. Thus, in a forcible entry and detainer action, any matter which is not covered by the Act itself would be controlled by justice of the peace statutes, as no procedure is provided for such actions in the court of common pleas.

¹⁴ Thus, in most actions, when the amount claimed is between \$100.01 and \$300.00, both inclusive, the court of common pleas, the municipal court, and the justice of the peace have concurrent jurisdiction. While this may result in some cases being filed in the municipal court rather than with the justice of the peace, the *exclusive* original jurisdiction of the justice of the peace, outside the territory of the municipal court, is left unchanged. For example, in an action on an account for less than \$100.01, if the defendant may be served only in the county outside the territory, the jurisdiction of the justice of the peace is exclusive.

¹⁵ OHIO GEN. CODE § 6308-1 *et seq.*

(1) Commencement of Actions

Section 1602 of the General Code provides that actions in the municipal court "shall be commenced by filing a petition upon which summons shall be issued by the clerk." Thus, so far as the Act is concerned, it is unnecessary to file a precipe for the issuance of summons. This provision is similar to Rules 3 and 4 of the Federal Rules of Civil Procedure. It is likely that local rules of court will be adopted as to the manner of indicating to the clerk the type of service desired by the plaintiff.

Thus, the commencement of an action in municipal court differs from the commencement of an action in the court of common pleas. Section 11279 of the General Code, governing procedure in the court of common pleas, provides:

A civil action must be commenced by filing in the office of the clerk of the proper court a petition, and causing a summons to be issued thereon.

By reason of the wording of Section 1602 it would seem that upon the filing of the petition in municipal court, the action is commenced for any purpose for which a special rule has not been established. Thus, upon the filing of the petition, the action is probably commenced within the meaning of Section 11819, which provides that "in a civil action for the recovery of money, *at or after its commencement*, the plaintiff may have an attachment . . ." (Emphasis supplied.) However, there would ordinarily be no reason why the plaintiff's attorney could not make certain that summons had been issued before obtaining an attachment. This should avoid any question as to whether the attachment was premature.¹⁶

A special rule, however, has long been established as to when an action is commenced for the purpose of tolling the statute of limitations. This rule is set forth in Sections 11230 and 11231 of the General Code. In view of the second paragraph of Section 1599, this special rule is probably applicable to the municipal court.

¹⁶ In *Consumers Plumbing and Heating Supply Co. v. Chicago Pottery Co.*, 155 Ohio St. 373, 98 N.E. 2d 823 (1951), the court held that within the purview of Section 11819 of the General Code, "an action is commenced when a petition is filed in the proper court and a summons issued thereon." The court rejected the argument that the attachment was premature because it was issued prior to the date of the first publication of notice in constructive service. Although the case involved an action against a foreign corporation upon which personal service could not be had within the state, the unqualified language of the first paragraph of the syllabus indicates that it would not be restricted to such a situation. It is to be hoped that the decision indicates that the troublesome distinction between "time of commencement" and "manner of commencement" suggested in *Crandall v. Irwin*, 139 Ohio St. 463, 40 N.E. 2d 933 (1942), and *Pilgrim Distributing Corp. v. Galsworthy, Inc.*, 148 Ohio St. 567, 76 N.E. 2d 382 (1947) has been abandoned, or at least that the distinction will be confined to statute of limitations problems, where it is probably harmless.

If so, the mere filing of a petition in municipal court, without more, would not be sufficient to toll the statute of limitations.

A special rule is established by the Act itself as to when an action is commenced for the purpose of establishing *lis pendens*.

Section 1606 provides in part:

An action is pending so as to charge third persons with notice of its pendency when summons has been served or the first publication made

The language of this section differs from the language of the common pleas court *lis pendens* statute, Section 11300, in the addition of the significant word "first" before the word "publication."

(2) Service of Summons.

Section 1603 of the General Code provides that service shall be made in the manner provided for service in the court of common pleas. Apparently the reference to common pleas procedure is broad enough to include Section 11297-1, authorizing courts to provide, by rule, for service by mail, particularly in view of the reference to the municipal court in the latter section. Mail service is widely employed in municipal courts at present.

Section 1603 empowers the bailiff of the municipal court to serve process within the county or counties in which the court is situated, thus making it unnecessary to issue process to the sheriff of the county. However, if process is to be served in another county, it must be issued to the sheriff of that county.

(3) Pleadings.

Except for the reference to the petition in Section 1602 of the General Code, the Act is silent on the subject of pleadings. Therefore, under Section 1599, the statutory provisions for pleadings in the court of common pleas would be applicable to the municipal court. Any municipal court rule in conflict with the common pleas statutes would be invalid. For example, existing Rule 15 of the Municipal Court of Columbus provides that a reply shall not be required. This local rule is inconsistent with Section 11326, providing for a reply in actions in the court of common pleas, and would therefore probably be abrogated by Section 1599.

(4) Trial.

Except for the matter of jury trials, the Act is silent on the subject of trial, and therefore this subject would be governed by the statutory provisions for the court of common pleas. The Act provides that any cause in a municipal court "shall be tried to the court unless a jury trial be demanded in writing by a party entitled to the same."¹⁷ This is similar to Rule 38 (d) of the Federal Rules of Civil Procedure, and is contrary to the rule in the court of com-

¹⁷ OHIO GEN. CODE § 1604.

mon pleas that a party entitled to a trial by jury loses such right only by waiver.¹⁸

In the enumeration of powers in Section 1596 of the General Code, the municipal court is empowered to "grant a new trial or motion in arrest of judgment, vacate or modify a judgment," etc., but is not expressly authorized to grant a motion for judgment notwithstanding the verdict. Nevertheless, the municipal court probably has the power to grant such a motion, either by virtue of the catch-all provision at the end of Sub-section (A), or by virtue of the second paragraph of Section 1599, which provides that in the absence of a special provision in the Act, "the practice and procedure shall be the same as is provided for in courts of common pleas."

(5) Counterclaims.

Whenever a court is established with a maximum pecuniary limitation upon its jurisdiction, the problem arises as to the method of providing for counterclaims in excess of the maximum. The problem has been handled in various ways.¹⁹ Under the Act, the defendant in an action in municipal court who has a counterclaim in excess of \$2,000.00 may take one of three courses: (1) He may counterclaim for the full amount, in which event the municipal judge (except in the Cleveland municipal court) must certify the proceedings in the case to the court of common pleas, pursuant to Sub-section (E) of Section 1602 of the General Code. (2) He may remit the excess over \$2,000.00, and judgment may be entered on his counterclaim for the residue, pursuant to the first sentence of Sub-section (F). The sub-section does not indicate at what stage of the case the remission may or must be made. (3) He may "at his option, withhold setting up any statement of counterclaim and make the same the subject of a separate action," pursuant to the second sentence of Sub-section (F). Thus the use of the counterclaim is permissive. The compulsory counterclaim, employed in the Federal Rules of Civil Procedure, was not adopted in the Act.

If the defendant takes the first course, and counterclaims for more than \$2,000.00, the language of Sub-section (E), taken literally, imposes an absolute duty on the municipal judge to certify the "proceedings in the case" to the court of common pleas. However, the municipal court probably has the power to protect its jurisdiction by refusing to certify if the defendant's claim of more than \$2,000.00 is obviously not made in good faith. Although the federal

¹⁸ OHIO GEN. CODE § 11421-1.

¹⁹ For example, in the case of justices of the peace, Section 10379 of the General Code provides that the defendant need not remit the excess of his claim over the jurisdictional maximum, and that a recovery for any part of the amount actually set up by the defendant shall not be a bar to his subsequent action for the amount over the jurisdictional maximum.

jurisdictional statutes are similarly unqualified, the federal courts have refused jurisdiction "if, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount, and that his claim was therefore colorable for the purpose of conferring jurisdiction. . . ." ²⁰

If the case is one which should be certified under Sub-section (E), apparently no motion by the defendant is necessary, as the statute imposes the duty directly upon the municipal judge, and he probably has no jurisdiction to proceed further, except to certify. However, if the judge does not certify promptly, a written motion to certify should be filed, to keep the record clear and to avoid confusion.

Presumably the certification itself should be by docket entry. The procedure upon certification to the court of common pleas is set forth in Section 1602 (G) of the General Code, which provides in general that the clerk of the municipal court shall transmit the original papers and a certified transcript of the journal entries to the clerk of the court of common pleas. Sub-section (G) concludes with this sentence:

The case shall then proceed as if it has [had?] been commenced originally in the court of common pleas.

By this it is probably meant merely that the *further* proceedings in the court of common pleas shall be in accordance with the procedure of that court. It was certainly not meant by this provision to upset retroactively the validity or correctness of any step which was taken in the municipal court, in accordance with the procedure of that court, prior to certification. Thus, if plaintiff's petition in the municipal court prayed for less than \$100.01, the minimum jurisdiction of the court of common pleas, the latter court, after certification, would nevertheless have jurisdiction of plaintiff's claim. The court of common pleas would take the case in the condition it was at the time of certification. If this approach is correct, it would probably follow that if, upon the pleadings filed in municipal court, that court would have taken judicial notice of a municipal ordinance, the court of common pleas should likewise take such judicial notice after the case is certified to it. ²¹ This point should probably

²⁰ St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283 (1938).

²¹ In *Orose v. Hodge Drive-It-Yourself Co.*, 132 Ohio St. 607, 9 N.E. 2d 671 (1937), the supreme court held that "an appellate court, in reviewing the judgment of a municipal court on questions of law, may take judicial notice of an ordinance of which the municipal court did and was entitled to take notice." However, the certification procedure differs basically from an appeal. It is more nearly analogous to the removal of an action from state court to federal court.

be clarified by an amendment. Until it is clarified by amendment or judicial construction, the safe course will be to amend the pleadings in the court of common pleas so as to plead applicable municipal ordinances.

The defendant may choose the third course, as described *supra*, and instead of counterclaiming, bring a separate suit on his claim against the plaintiff. One possible motive for this would be to obtain a different venue for the separate suit. Another possible motive would be to delay bringing action on a personal injury claim until the extent of the injuries could be more accurately determined. If the defendant does, for any reason, bring a separate suit, both parties should bear in mind the possibility that the litigation and determination of certain issues in the first action may be conclusive on the parties in the second action.²² As an example, we may consider the common case of the collision of two automobiles, one owned and operated by the plaintiff, the other owned and operated by the defendant. If the issue of the negligence of the defendant is litigated in the first action in municipal court, and the court determines that the defendant was negligent, such determination would be conclusive against the defendant on that issue in the second action.

In such a second action, the question may also arise as to whether the plaintiff in the second action (who was the defendant in the first action in municipal court) may recover his costs in the subsequent action, even if successful. This question results from the provisions of Section 11624 of the General Code.²³ As Section 1602 (F) is a special provision, and unqualifiedly permits the defendant to bring a separate action, the second paragraph of Section 1599 might require that the special provision be applied to the exclusion of Section 11624.

(6) Attachment and Garnishment.

By reason of the second paragraph of Section 1599 of the General Code, the procedure for attachment and garnishment in municipal court will in general conform to the statutes governing attachment and garnishment in the court of common pleas.

This general rule of conformity will make applicable to municipi-

²² This principle has been described as "estoppel by judgment" in *Vasu v. Kohlers, Inc.*, 145 Ohio St. 321, 344, 61 N.E. 2d 707 (1945). The term "collateral estoppel" has been employed in the Restatement of Judgments (1942). A general discussion may be found in Scott, *Collateral Estoppel by Judgment*, 56 HARV. L. REV. 1 (1942).

²³ This section provides in part: "If a defendant omits to set up a counterclaim he cannot recover costs against the plaintiff in any subsequent action thereon." A recent application of the statute may be found in *Lyons, Exr., v. Garnette*, 88 Ohio App. 543, 98 N.E. 2d 346 (1950), which also discusses the estoppel by judgment principle.

pal courts newly enacted Section 11828-1 of the General Code,²⁴ requiring that a written demand be served on the debtor at least five days before seeking an order of attachment or an order in aid of execution against personal earnings. Such notice has previously been required in similar proceedings before justices of the peace by Section 10272. When, in an action in municipal court, such demand has been made, pursuant to Section 11828-1, the further provisions of this statute give "the judge of the municipal court within this state in whose jurisdiction he resides" authority to appoint a trustee as provided for in Section 11728-1. The procedure in connection with the trusteeship would be governed by Section 11728-1.

Although, as stated previously, the procedure for attachment and garnishment in municipal court will in general conform to the common pleas court procedure, Section 1602(B) requires that in such proceedings in municipal court, "a true copy of the affidavit shall be served with the summons and order of attachment or garnishment."

(7) Terms of Court Abolished.

An interesting and salutary reform is accomplished by Section 1608 of the General Code, which provides:

There shall be no term in municipal court, but for the purpose of computing time, ninety days following judgment shall be considered within term and time thereafter shall be considered after term.

Although the language of the section is not as explicit as might be desired,²⁵ it undoubtedly will accomplish its purpose. That purpose is to allow a uniform period of ninety days within which the party against whom a judgment has been entered may move for its vacation or modification as if he were still "in term." It has been fairly common practice for plaintiffs to cause the entry of judgments, particularly default and cognovit judgments, to be made near the close of a term. As a result, it is often difficult or impossible for the defendant to move for vacation or modification within term, and he is therefore relegated to the more rigorous procedure which must be pursued after term. Section 1608 should prevent this tactic in municipal court.

²⁴ House Bill No. 209, 99th General Assembly, effective date August 8, 1951, discussed elsewhere in this issue.

²⁵ The phraseology of Section 452 of Title 28 of the United States Code, and Rules 6(c) and 60(b) of the Federal Rules of Civil Procedure, which were drafted with a similar objective in view, seems preferable. A somewhat different approach is taken in the federal statute and rules. They do not abolish terms of court, but provide that the time for the taking of any proceeding, or the power of a court to act, is not affected by the continued existence or expiration of a term of court.

APPEALS FROM THE MUNICIPAL COURT IN CIVIL ACTIONS

(1) In General.

The various separate municipal court acts differed widely in their provisions relative to appeals from such courts. This lack of uniformity lessened the value as a precedent of a decision construing a provision of one municipal court act. It also created a constitutional problem, in view of the existence of Section 11215 of the General Code, discussed *infra*, in that the statutory appellate jurisdiction of the court of common pleas was not uniform throughout the state. This possibly violated the provision of Article II, Section 26 of the Ohio Constitution, requiring that "all laws, of a general nature, shall have a uniform operation throughout the State." The Act avoids these difficulties, as the appeal provisions are uniformly applicable to all municipal courts throughout the state.

Section 1609 of the General Code provides in part as follows:

Appeals from the municipal court may be taken as follows:

(A) Such appeals may be taken either to the court of common pleas or to the court of appeals as provided by sections 12223-1 to 12223-40, inclusive, and sections 13459-1 to 13459-14, inclusive, of the General Code.

The word "appeals" in Section 1609 is undoubtedly used in the generic sense, including both (1) appeals on questions of law and (2) appeals on questions of law and fact. The word is thus defined in Section 12223-1, the first section of the Appellate Procedure Act.

(2) Appeal on Questions of Law to The Court of Appeals.

Undoubtedly it is possible to appeal on questions of law directly from the municipal court to the court of appeals. Section 1609, quoted *supra*, authorizes appeals from the municipal court to the court of appeals. However, Section 1609 is probably not self-executing. That is, it does not, *ex proprio vigore*, confer jurisdiction upon the court of appeals to review judgments of the municipal court, pursuant to Article IV, Section 6 of the Ohio Constitution, as amended effective January 1, 1945. If Section 1609 were self-executing, this would lead to the consequence that an appeal on questions of law and fact might always be taken from the municipal court to the court of appeals, even in a non-chancery case. Such a result was surely not intended.

However, even though Section 1609 is not self-executing, the statutes referred to therein include Section 12223-27. That section authorizes the court of appeals to review "a judgment rendered or final order made by a court of common pleas, a probate court or by *any other court of record* . . . upon an appeal on questions of law. . . ." (Emphasis supplied.) As the municipal court is a court of record, it would be comprehended within the terms of Section

12223-27. Section 12223-27 is clearly self-executing. Thus an appeal on questions of law from the municipal court to the court of appeals is plainly authorized by Section 12223-27. In view of the ample statutory basis for this mode of review, it is probably unnecessary to consider whether the constitutional jurisdiction of the court of appeals to review judgments of the municipal court on questions of law, which existed prior to 1945,²⁶ still continues.

(3) Appeal on Questions of Law and Fact to The Court of Appeals.

In the event of the trial of a chancery case in the municipal court, it is possible to appeal directly from the municipal court to the court of appeals on questions of law and fact, as the court of appeals still has "appellate jurisdiction in the trial of chancery cases" as formerly provided in Article IV, Section 6 of the Ohio Constitution.²⁷ As stated *supra*, although Section 1609 should be construed to authorize appeals on questions of law and fact, it is probably not self-executing, and therefore could not be regarded as the basis for this mode of review in the court of appeals. Furthermore, although Section 1609 refers to Section 12223-22, relating to appeals on questions of law and fact, the latter section is obviously not self-executing.

(4) Appeals on Questions of Law to The Court of Common Pleas.

It seems clear that it is possible to appeal to the court of common pleas on questions of law from any judgment or final order of the municipal court. Section 12223-23 of the General Code, referred to in Section 1609, quoted *supra*, provides that "a judgment rendered or final order made by a justice of the peace or any other tribunal. . . inferior to the court of common pleas, may be reversed, vacated or modified by common pleas court upon an appeal on questions of law."²⁸ (Emphasis supplied.) Experience under the Act will no doubt demonstrate whether it is desirable to permit appeals on questions of law from the municipal court to the court of com-

²⁶ See *Cincinnati Polyclinic v. Balch*, 92 Ohio St. 415, 111 N.E. 159 (1915).

²⁷ *Youngstown Municipal Ry. Co. v. Youngstown*, 147 Ohio St. 221, 70 N.E. 2d 649 (1946) held that until the General Assembly changes the appellate jurisdiction of the court of appeals in the trial of chancery cases, such jurisdiction remains as it was at the time of the amendment to Article IV, Section 6 of the Ohio Constitution, effective January 1, 1945. Prior to the 1945 amendment the supreme court had held, in *Commonwealth Oil Co. v. Turk*, 118 Ohio St. 273, 160 N.E. 856 (1928), that in a chancery case an "appeal" (which would now be described as an "appeal on questions of law and fact") might be taken from the municipal court to the court of appeals.

²⁸ In *Hess v. Devou*, 112 Ohio St. 1, 146 N.E. 311 (1925) the supreme court held that former Section 12241 of the General Code, now Section 12223-23, conferred upon the court of common pleas jurisdiction to review judgments of municipal courts on error, and held further that it did not violate Article IV, Section 6 of the Ohio Constitution.

mon pleas. Although it may be a convenience to the litigants in some cases, it adds one appeal stage, as the party who loses in the court of common pleas may prosecute a further appeal to the court of appeals. Such an appeal might therefore lend itself to delaying tactics.

(5) Appeals on Questions of Law and Fact to The Court of Common Pleas.

It is not clear whether it is possible to appeal from a judgment of the municipal court to the court of common pleas on questions of law and fact. The bill approved by the Council of Delegates of the Ohio State Bar Association on November 4, 1950²⁹ contained the following provision:

Sec. 1609. Appeals from the municipal court may be taken as follows:

(A) No appeals on questions of law and fact shall be permitted, except in those cases where the equitable jurisdiction of the court has been invoked. An appeal on questions of law shall be taken to the court of appeals from a final order, judgment, or decree of the municipal court as provided by sections 12223-1 to 12223-40, inclusive of the General Code. An appeal in a criminal case shall be taken only to the court of appeals and the procedure shall be governed by sections 13459-1 to 13459-14, inclusive, of the General Code.

However, paragraph (A) of the bill was completely rewritten by the time Substitute Senate Bill No. 14 was introduced. In the substitute bill, paragraph (A) appeared in its final form, *without* the express prohibition on appeals on questions of law and fact, and *with* the authorization of appeals to the court of common pleas. The change in paragraph (A) was probably made by amendment in the Senate, subsequent to the introduction of original Senate Bill No. 14.

As a result of the drastic amendment of Section 1609, there is a distinct possibility that an appeal may be taken from the municipal court to the court of common pleas on questions of law and fact. As stated *supra*, although Section 1609 should be construed to authorize appeals on questions of law and fact, it is probably not self-executing, and therefore could not be regarded as the basis for this mode of review in the court of common pleas. However, the statutes referred to in Section 1609 include Section 12223-22, which provides in part that appeals on questions of law and fact may be taken "from any court, tribunal, commission or officer to any court of record *as may be provided by law*." (Emphasis supplied.) This section is obviously not self-executing. However, it is probable that the phrase, "as may be provided by law" refers,

²⁹ *Supra*, note 3.

inter alia, to Section 11215, providing for the civil jurisdiction of the court of common pleas. The latter section provides in part:

The court of common pleas shall have. . . appellate jurisdiction from the decision of county commissioners, justices of the peace, and other inferior courts in the proper county, in all civil cases, subject to the regulations provided by law.

The term "appellate jurisdiction," having been employed in the statute prior to the Appellate Procedure Act, obviously means jurisdiction to entertain an appeal on questions of law and fact.³⁰

The effect of Section 11215 was considered in cases arising under certain former municipal court acts which contained no express provisions either affirming or denying the right to appeal from the particular municipal court to the court of common pleas on questions of law and fact. The decisions were conflicting.³¹ In spite of this conflict, the question seems never to have been considered by the supreme court.³² It has been argued that the legislative history of Section 11215 indicates that it is not self-executing.³³

³⁰ The term "appellate jurisdiction," as employed in Section 11215 of the General Code, was so construed in *Bates v. Boutelle*, 68 Ohio App. 11, 38 N.E. 2d 420 (1939), and *Northern Ohio Dry Cleaners, Inc. v. Givner*, 32 Ohio L. Abs. 362 (1939). The term "appellate jurisdiction in the trial of chancery cases," employed in Article IV, Section 2 of the Ohio Constitution prior to 1945, was repeatedly construed to mean what would now be described as jurisdiction to review on questions of law and fact. See, e.g., *Kiriakis v. Fountas*, 109 Ohio St. 553, 143 N.E. 129 (1924).

³¹ The following cases held that there was a right to appeal from the municipal court to the court of common pleas on questions of law and fact; *DeWolfe v. Ottgen*, 71 Ohio App. 380, 50 N.E. 2d 180 (1942), originating in the Municipal Court of Toledo; *Bates v. Boutelle*, *supra*, note 30, originating in the Municipal Court of Steubenville; *Northern Ohio Dry Cleaners, Inc. v. Givner*, *supra*, note 30, originating in the Municipal Court of Lorain; *Woodward v. Hafely*, 20 Ohio L. Abs. 256 (1935), originating in the Municipal Court of Lorain; *Weber v. Eppstein*, 34 Ohio App. 10, 170 N.E. 191 (1929), originating in the Municipal Court of Canton. In *Doll v. Williams*, (unreported) Franklin County Common Pleas, No. 124,755, decided February 4, 1930, originating in the Municipal Court of Columbus, it was held that a limitation on the right of appeal (i.e., on questions of law and fact) from the Municipal Court of Columbus to the court of common pleas, contained in former Section 1558-75(a) was unconstitutional.

Other cases, all originating in the Municipal Court of Cincinnati, held that there was no right to appeal to the court of common pleas on questions of law and fact. *Sroufe v. Guttman*, 65 Ohio App. 556, 32 N.E. 2d 444 (1940); *Weaver v. Reichert*, 32 N.E. 2d 422 (full opinion), 2 Ohio L. Abs. 697 (abstracted opinion), motion to certify overruled November 4, 1924; *Kappner v. Dolan*, 23 Ohio L. Abs. 555, 8 Ohio Op. 275 (1937).

³² In 1924, the supreme court overruled a motion to certify in *Weaver v. Reichert*, *supra*, note 31, but the conflict apparently had not developed at that time.

³³ House, *De Novo Appeals From Municipal Courts to Common Pleas Courts in Ohio*, 17 U. OF CIN. L. REV. 159, 36 Ohio Op. 395 (1948).

The same writer further argues that the supreme court ignored Section 11215 of the General Code, in *Hess v. Devou*,³⁴ because that statute is not self-executing. As against this second contention, it may be urged that in *Hess v. Devou* the question before the court was whether proceedings in *error* (which would now be described as an "appeal on questions of law") could be taken from the Municipal Court of Cincinnati to the court of common pleas. This specific type of review was described explicitly in former Section 12241, now Section 12223-23 of the General Code. Therefore, there was no occasion for the supreme court to refer to Section 11215 as the term "appellate jurisdiction" in the latter section, as has been stated *supra*, plainly contemplates the type of review which would now be described as an "appeal on questions of law and fact."

If the Act authorizes appeals on questions of law and fact from the municipal court to the court of common pleas, this is contrary to the general tenor of the Act, which clearly manifests an intention to create a court of record, capable of administering justice according to the standards of the court of common pleas. It is submitted that the Act should be amended to make it clear that appeals on questions of law and fact to the court of common pleas are not permitted.

CRIMINAL JURISDICTION OF THE MUNICIPAL COURT

The criminal jurisdiction of the municipal court is governed by Sections 1584 and 1598 of the General Code. It may be outlined as follows:

A. Final jurisdiction of:

1. The violation of any ordinance of any municipality within its territory.
2. Any misdemeanor committed within its territory.
3. Crimes and offenses committed within the county which are now or may hereafter be within the county wide final jurisdiction of justices of the peace.

B. Preliminary jurisdiction of:

1. Felonies committed within its territory.
2. Crimes and offenses committed within the county which are now or may hereafter be within the county wide preliminary jurisdiction of justices of the peace.

With reference to A,3, and B,2, of the outline, *supra*, it is assumed that the last sentence of Section 1598, conferring upon the municipal courts county wide jurisdiction of crimes and offenses which are within the county wide jurisdiction of justices of the peace, contemplates both preliminary and final jurisdiction. In that

³⁴ *Supra*, note 28.

connection, it should be noted that the general statute providing for the jurisdiction of justices of the peace in criminal matters³⁵ confers county wide preliminary jurisdiction on the justice of the peace only upon affidavit filed by certain persons and officers, and only "in the event there is no other court of concurrent jurisdiction other than the common pleas court, police court or mayor's court." The Attorney General has ruled that a municipal court is a "court of concurrent jurisdiction" within the meaning of this statute.³⁶ Therefore, the extent of the preliminary criminal jurisdiction of the municipal court (B,2, of the outline, *supra*) is problematical. Such provisions in old municipal court acts as former Section 1558-55(a), limiting the county wide jurisdiction of justices of the peace and mayors in Franklin County, were repealed by Section 2 of the Act. The first paragraph of Section 1584 terminates the jurisdiction of justices of the peace only within the territory of the municipal court.

Apparently the final and preliminary jurisdiction of the municipal court outside its territory (A,3, and B,2, of the outline, *supra*) is concurrent with that of justices of the peace, and not exclusive thereof.

Apparently the municipal court does not have final jurisdiction of the violation of an ordinance of any municipality outside its territory. Furthermore, although it does have final jurisdiction of the violation of any ordinance of any municipality within its territory (A,1, of the outline, *supra*), such jurisdiction is not exclusive. The second sentence of Section 1584 of the General Code, inserted by amendment, provides:

All other mayors within the territory may retain such jurisdiction as now provided in all criminal causes involving violation of ordinances of their respective municipalities to be exercised concurrently with the municipal court.

This leaves to such municipalities the power to provide for prompt local enforcement of their own ordinances, instead of compelling them to resort to the sometimes distant and inconvenient municipal court.

It would seem that mayors have county wide final jurisdiction of misdemeanors committed outside the territory of the municipal court.³⁷ It may also be contended that mayors still have coun-

³⁵ OHIO GEN. CODE § 13422-2.

³⁶ 1937 OPS. ATT'Y. GEN. (Ohio) No. 1652.

³⁷ Sections 4528 and 4536 of the General Code confer on mayors county wide final jurisdiction of prosecutions for misdemeanors. As stated in the text, *supra*, such provisions in old municipal court acts as former Section 1558-55(a) of the General Code, limiting the jurisdiction of justices of the peace and mayors in Franklin County, were repealed by Section 2 of the Act. The first sentence of Section 1584 terminates the jurisdiction of the mayor and the police justice only "within the municipality in which such municipal court is located."

ty wide final jurisdiction of misdemeanors committed within the territory of the municipal court, but outside the municipality in which such court is located. Although the Act gives the municipal court final jurisdiction of such misdemeanors (A,2, of the outline, *supra*), it does not terminate the jurisdiction of mayors in that area. Therefore, there may be concurrent jurisdiction between the municipal court and the mayors as to misdemeanors committed in that area.

Likewise, police courts probably have final jurisdiction of misdemeanors committed within a limited area³⁸ and therefore the foregoing discussion would also apply to them, to some extent.

CRIMINAL PROCEDURE IN THE MUNICIPAL COURT

The criminal practice and procedure in the municipal court is governed by the first paragraph of Section 1599 of the General Code. Unlike civil actions, the Act contains no provisions directly prescribing the procedure in criminal cases in the municipal court. Instead, such procedure is completely prescribed by reference to criminal procedure in other courts. (1) The basic reference is to police courts, Section 1599 providing that the procedure in criminal cases in the municipal court shall be the same as in police courts. (2) "If no practice or procedure is provided for police courts, then the practice or procedure of mayor's courts shall apply." (3) If there is no provision for either of the foregoing, "then the practice or procedure of justice of the peace courts shall apply." This "incorporation by reference" was probably advisable in the Act. However, experience under the Act may indicate the desirability of a complete, self-contained system of criminal procedure for the municipal court.

³⁸ OHIO GEN. CODE § 4577.